



06-17-05

IFW / AF

**CERTIFICATE OF EXPRESS MAILING**

I hereby certify that this APPLICANTS' RECORD OF TELEPHONE INTERVIEW OF 17 MAY 2005 and this REQUEST FOR WITHDRAWAL OF FINAL OFFICE ACTION AND, IN THE ALTERNATIVE, RESPONSE TO FINAL OFFICE ACTION is being deposited with the United States Postal Service with sufficient postage as Express Mail, Express Mail Label No. **ER788048486US**, in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, USA, on **June 16, 2005**.

Date: 16 June 2005

KEITH L. JENKINS,

Registered Patent Attorney for Applicant



Appl. No. : 10/949,868  
Applicant : Kirk Evans, et al.  
Filed : September 25, 2004  
TC/A.U.: 3711  
Examiner: Mark S. Graham  
Docket No.: EV04004  
Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Dear Sir,

The enclosed APPLICANTS' RECORD OF TELEPHONE INTERVIEW OF 17 MAY 2005 and the enclosed REQUEST FOR WITHDRAWAL OF FINAL OFFICE ACTION AND, IN THE ALTERNATIVE, RESPONSE TO FINAL OFFICE ACTION are hereby resubmitted after having been originally mailed by certified first class mail on June 3, 2005. According to the tracking system provided by the US Postal Service, that correspondence was not delivered (see attached copy of the certified mail receipt and the USPS Track and Confirm output). An attempt to fax the enclosed correspondence failed on June 9, 2005. Hopefully, if all copies of the correspondence eventually arrive at the USPTO, confusion will be avoided by careful handling.

Best regards,

Keith L. Jenkins  
Reg. No. 46,303  
Customer No. 45,171



## Track & Confirm

### Current Status

You entered 7005 0390 0001 2616 0514

Your item was accepted at 12:02 pm on June 03, 2005 in CHANDLER, AZ 85225. Information, if available, is updated every evening. Please check again later.

### Notification Options

► Track & Confirm by email [What is this?](#)

[Go >](#)

### Track & Confirm

Enter label number:

[Track & Confirm FAQs](#)



POSTAL INSPECTORS  
Preserving the Trust

[site map](#) [contact us](#) [government services](#)  
Copyright © 1999-2002 USPS. All Rights Reserved. Terms of Use Privacy Policy

7005 0390 0001 2616 0514

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)  
For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

ALEXANDRIA, VA 22311

Postage	\$ 1.75	UNIT ID: 0200
Certified Fee		Postmark JUN 3 2005
Return Receipt Fee (Endorsement Required)		Clerk: KBT/KBF
Restricted Delivery Fee (Endorsement Required)		JUN 3 2005
Total Postage & Fees	\$ 4.05	

Sent To: *STOP AF Comm's Ser Patents*

Street, Apt. No. or PO Box No.: *PO Box 1450*

City, State, ZIP+4: *Alexandria VA 22313-1450*

PS Form 3800, June 2002 See Reverse for Instructions

Appl. No. 10/949,868  
Summary of Telephonic Interview of 05/17/2005



Appl. No. : 10/949,868  
Applicant : Kirk Evans, et al.  
Filed : September 25, 2004  
TC/A.U.: 3711  
Examiner: Mark S. Graham  
Docket No.: EV04004  
Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450


**APPLICANTS' RECORD OF TELEPHONE INTERVIEW OF 17 MAY 2005**

**Applicants' Attorney's Summary of Telephonic Interview of 17May 2005**

Applicants' attorney, Keith L. Jenkins, discussed the above-captioned pending application with Examiner Mark S. Graham for the purpose of determining the basis for the final rejections mailed 10 May 2005. The Examiner admitted that the last two lines in Claim 1 of the application do constitute an element of the claim. The Examiner raised, for the first time, the argument that the element contained in the last two lines of claim 1 was "inherently" present the Preast and Gibney references. Applicants' attorney stated that he did not see that any inherency arguments had been advanced by the Examiner in the First or Final Office Actions in the context of Preast and Gibney.

Applicants' attorney also discussed the restriction requirement with the Examiner. The Examiner asserted that the invention, as claimed, could be used without the icons to make a shot by mentally ignoring the icons and, therefore, could be used to practice a different process. Applicants' attorney disagreed, pointing out that the icons must be "observable in the peripheral vision" (Claim 1) and that the invention as claimed would create images in the mind of any user, even when the user's attention was not focused on them.

Respectfully submitted,

  
Keith L. Jenkins  
Reg. No. 46,303